

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AT JAIPUR**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER  
SHRI PRASANTA KUMAR MOHANTY,  
HON'BLE TECHNICAL MEMBER**

**CP (CAA) No. 11/230-232/JPR/2022**  
**Connected with**  
**CA (CAA) No. 02/230-232/JPR/2022**

*Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**M/S FASHION FUNDA.COM PRIVATE LIMITED  
(Applicant No. 1 / Transferor Company No. 1)**

**AND**

**M/S VINAYAK VINIMAY PRIVATE LIMITED  
(Applicant No. 2 / Transferor Company No. 2)**

**AND**

**M/S KELVIN MERCHANTS PRIVATE LIMITED  
(Applicant No. 3 / Transferor Company No. 3)**

**AND**

**M/S NIKITA CREDITS PRIVATE LIMITED  
(Applicant No. 4 / Transferor Company No. 4)**

**AND**

**M/S SCORPIO CREDITS PRIVATE LIMITED  
(Applicant No. 5 / Transferor Company No. 5)**

**AND**

**M/S SARVODAYA AGENCIES PRIVATE LIMITED  
(Applicant No. 6 / Transferor Company No. 6)**

**AND**

*CP (CAA) No. 11/230-232/JPR/2022*  
*Connected with*  
*CA (CAA) No. 02/230-232/JPR/2022*

**M/S SANGAM E-COM LIMITED  
(Applicant No. 7 / Transferee Company)**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**MEMO OF PARTIES**

**M/S FASHION FUNDA.COM PRIVATE LIMITED,**

**CIN: U74900RJ2005PTC020146**

R/o: B-389 Shastri Nagar, Bhilwara

Rj 311001 In

**...Applicant No. 1/Transferor Company No. 1**

**AND**

**M/S VINAYAK VINIMAY PRIVATE LIMITED,**

**CIN: U51109RJ2007PTC044428**

R/o: B-09, 2<sup>nd</sup> Floor, S.K. Plaza Pur

Road, Bhilwara- 311001, Rajasthan

**...Applicant No. 2/Transferor Company No. 2**

**AND**

**M/S KELVIN MERCHANTS PRIVATE LIMITED,**

**CIN: U51109RJ2005PTC044342**

R/o: B-09, 2<sup>nd</sup> Floor, S.K. Plaza Pur

Road, Bhilwara- 311001, Rajasthan

**...Applicant No. 3/Transferor Company No. 3**

**AND**

**M/S NIKITA CREDITS PRIVATE LIMITED,**

**CIN: U17100RJ1993PTC066224**

R/o: 10, Hanuman Complex

Kumbha Circle Road, Azad Nagar

Bhilwara Bhilwara, Rajasthan

311001

**...Applicant No. 4/Transferor Company No. 4**

**AND**

**M/S SCORPIO CREDITS PRIVATE LIMITED,**

**CIN: U17100RJ1994PTC066229**

R/o: B-09, 2<sup>nd</sup> Floor, S.K. Plaza Pur

Road, Bhilwara- 311001, Rajasthan

**...Applicant No. 5/Transferor Company No. 5**

**AND**

**M/S SARVODAYA AGENCIES PRIVATE LIMITED,**

**CIN: U51109WB2005PTC102195**

R/o: 19/1, Camac Street 3<sup>rd</sup> Floor,

Kolkata West Bengal- 700017

**...Applicant No. 6/Transferor Company No. 6**

**AND**

**M/S SANGAM E-COM LIMITED,**

**CIN: U64202RJ2000PLC016419**

R/o: B-08, 1<sup>st</sup> Floor, S.K. Plaza Pur

Road, Bhilwara- 311001, Rajastha

**...Applicant No. 7/Transferee Company**

**Counsel for the Applicants:**

Sandeep Kumar Jain, PCS

**Order Pronounced on: 05.12.2022**

**ORDER**

**Per: Shri Prasanta Kumar Mohanty, Technical Member**

1. This joint second motion petition under Section 230-232 of the Companies Act, 2013 ('Act') is filed by the Petitioner Companies in terms of Rule 15 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 ('Rules') for the sanctioning of the Scheme of Amalgamation of M/s Fashion Funda.Com Pvt. Ltd. ('Applicant Company No. 1'/'Transferor

Company No. 1'), M/s Vinayak Vinimay Pvt. Ltd. ('Applicant Company No. 2'/ 'Transferor Company No. 2'), M/s Kelvin Merchants Pvt. Ltd. ('Applicant Company No. 3'/ 'Transferor Company No. 3'), M/s Nikita Credits Pvt. Ltd. ('Applicant Company No. 4'/ 'Transferor Company No. 4'), M/s Scorpio Credits Pvt. Ltd. ('Applicant Company No. 5'/ 'Transferor Company No. 5'), M/s Survodaya Agencies Pvt. Ltd. ('Applicant Company No. 6'/ 'Transferor Company No. 6') with M/s Sangam E-Com Limited ('Applicant Company No. 7'/ 'Transferee Company'), The registered offices of the Transferor Companies and Transferee Company are situated in the State of Rajasthan, within the jurisdiction of this Bench.

2. From the records, it is seen that the first motion application seeking directions for dispensing with the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies was filed before this Tribunal *vide* CA (CAA) No. 02/230-232/JPR/2022 and based on such joint application moved under Section 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Companies were dispensed with *vide* Order dated 06.04.2022. With respect to the Transferee Company, the meeting of the Equity Shareholders and Secured Creditors were dispensed with and the meeting of the Unsecured Creditors was scheduled to be held on 14.05.2022.

3. Pursuant to the order dated 06.04.2022, an IA was preferred numbered as *IA (CA) No. 23/JPR/2022* seeking modification in the order to the extent that meeting of the unsecured creditors of the Transferee Company, be dispensed with since the Company had obtained consent of more than 90% of the unsecured creditors in terms of value. The said IA was allowed vide order dated 25.05.2022.
4. Thereafter, the Petitioner Companies filed a second motion joint petition before this Tribunal on 25.07.2022 within the time prescribed. Consequently, the matter was listed on 29.07.2022, and the following order was passed on 12.08.2022:
  - i. *The date of hearing of the Petition filed by the Petitioner Companies for the approval of the Scheme is fixed on 22.09.2022.*
  - ii. *Notice of the hearing shall be advertised in two Newspapers, namely, Times of India (Bhilwara Edition) and Dainik Bhaskar, (Bhilwara Edition), not less than fifteen days before the aforesaid date fixed for hearing.*
  - iii. *In addition to the above public notices, the Petitioner Company shall serve the notice of the Petition on the following Authorities, namely, Income Tax Authorities (indicating the respective PAN Nos.), ROC concerned, Official Liquidator and Regional Director (North Western Region), RBI as well as other Sectoral Regulators or authorities, which may govern the working of the Company in the Scheme, at least thirty days before the date fixed for hearing of the above Petition.*
  - iv. *Further, notices shall also be served to Objector(s) or the representative(s) as contemplated under Sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representations and who have desired to be heard directly or through their representatives, along with a copy of the Petition and the extracts filed therewith, at-least fifteen days before the date fixed for hearing.*

- v. *The Petitioner Companies shall, at least seven days before the date of hearing of the Petition, file an affidavit of service concerning said publication effected as well as service of notice on the authorities mentioned above including the Sectoral Regulator(s) as well as to Objectors, if any.*
  - vi. *Objections, if any, to the Scheme, contemplated by the Authorities to whom notice has been given, may be filed on or before the date of hearing fixed herein, failing which it may be considered by this Tribunal that there is no objection on the part of the Authorities to the approval of the Scheme, by this Tribunal, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and Regulations/Rules framed thereunder.*
  - vii. *The Petitioner Companies shall comply with the proviso to Sub-Section (7) of Section 230 as may be applicable under the circumstances on or before the date fixed for hearing by filing a certificate of the Companies' Auditor.*
5. The Applicant Companies have filed affidavit of service in compliance of the order dated 12.08.2022 vide Diary No. 2627/2022 dated 02.09.2022 along with the photocopies of newspapers cuttings evidencing publication of notice in Times of India (Bhilwara Edition) and Dainik Bhaskar, (Bhilwara Edition), both dated 19.08.2022. The Applicant Companies have also filed a certificate in compliance to proviso to Section 230(7) of the Companies Act, 2013 confirming that the accounting treatment proposed in the Scheme complies with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.
6. The Regional Director had filed its report *vide* Diary No. 1950/2022 dated 04.07.2022 along with the report of the Registrar of Companies ('ROC').

The observations are as under:

- a. the Petitioner Company be directed to undertake the compliance of Section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly.
  - b. the Petitioner Company be directed to comply with the requirement of Section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Charges) Rules, 2014.
  - c. it is also stated that the report of the office of the Registrar of Companies, Rajasthan, Jaipur has been received *vide* Letter No. ROC/Amal./2020-21/324 dated 23.03.2022; as per the said report, there are no complaints against the petitioner transferee company and also there is no complaint / representation against the scheme of amalgamation of the Companies. A copy of ROC report is enclosed and marked as Annexure-B to the report of the RD.
  - d. the Regional Director has no other observations/ submissions and submits that the Scheme of Amalgamation of the Petitioner Companies may be considered on merits.
7. The Office of the Official Liquidator preferred a report *vide* Diary No. 1366/2022 dated 05.05.2022 stating to the Scheme of Amalgamation of the Applicant Companies. The Applicant Companies have filed Affidavit of Service to the concerned Income Tax Department *vide* Diary No. 2627/2022 dated 02.09.2022. No representation has been filed on behalf of the Income

Tax Department; therefore, it is presumed that there the department has no objection to the proposed amalgamation of the Applicant Companies. It is directed that if there will be any liability concerning Income Tax Authorities, the Petitioner shall be liable and pay according to the Rules and Regulations of the Income Tax Act, 1961 and Income Tax Rules, 1962.

8. An affidavit in terms of compliance of section 230(2) of the Companies Act has been filed *vide* Diary no. 682/2022 dated 04.03.2022. It states that the scheme of amalgamation does not involve debt restructuring under section 230(2)(c) of the Companies Act and the scheme also does not involve buy-back of securities as per section 68 of the Companies Act.
9. In compliance with proviso to Sub-Section (7) of Section 230 of the Companies Act, 2013, the Petitioner Companies have placed on record a certificate of Chartered Accountant dated 24.12.2021 filed *vide* Diary No. 2627/2022 dated 02.09.2022 at Page No. 65-78 confirming that their account treatment envisaged under the Scheme of Arrangement complies with applicable accounting standards notified by the Central Government under Section 133 of the Companies Act, 2013.
10. The audited financial statement of the Applicant Companies as on 31.03.2021 is annexed as Annexures- 3, 6, 9, 12, 15, 18 and 21 respectively *vide* Diary No. 399/2022 dated 11.02.2022.



11. As per the Scheme, the appointed date shall mean 01.04.2020 or such other date as this Tribunal may propose and approve. The effective date, as stated in the Scheme, is reproduced below:

*“Effective Date” means the last of the dates on which the conditions referred to in clause 16 of this scheme have been fulfilled. All references in this Scheme to the date of “coming into effect to this scheme” or “effectiveness of this scheme” or “Scheme taking effect” shall mean the Effective Date.”*

12. The share exchange ratio under the Scheme has been determined in accordance with the report of Mr. Sandeep Kumar Jain, IBBI Registered Valuer, bearing No. IBBI/RV/03/2019/12410 (Page No. 92-106 of the Petition). The share exchange ratio of the Transferor companies is that for every 1000 shares of the company the following shares of the Transferee Company will be allotted:

<b><i>Sr. No.</i></b>	<b><i>Name of Transferor Company</i></b>	<b><i>Share Exchange Ratio</i></b>
1.	M/s Fashion Funda.Com Pvt. Ltd.	1000: 0
2.	M/s Vinayak Vinimay Pvt. Ltd.	1000: 459
3.	M/s Kelvin Merchants Pvt. Ltd.	1000:94
4.	M/s Nikita Credits Pvt. Ltd.	1000:59
5.	M/s Scorpio Credits Pvt. Ltd.	1000:689
6.	M/s Survodaya Agencies Pvt. Ltd.	1000:107

13. We have heard the Learned Counsel for Petitioner Companies and perused the documents placed on record. Upon considering the approval accorded by the Members and Creditors of the Petitioner Companies to the proposed Scheme and the affidavits/ no objection filed by the respective regulatory authorities, there appears no impediment in sanctioning the present Scheme.

The petitioner company shall, however, remain bound to comply with the statutory requirement in accordance with the law.

14. The Scheme is hereby approved and declared the same to be binding on all the shareholders and creditors of the Petitioner Company and all concerns.
15. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rules, regulations, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the Petitioners.
16. While approving the Scheme as above, we further clarify that this Order should not be construed as an order in a manner granting exemption from payment of stamp duty or taxes, including income tax, GST, etc., or any other charges or payment in accordance with the law, or any kind of waiver in respect of any permission/compliance with any other requirement which may be specifically required under any law.
17. **THIS TRIBUNAL DOES FURTHER ORDER:**
  - I. Upon the Scheme becoming effective, on and from the Appointed Date in the Scheme, i.e. 01.04.2020, the respective undertakings of the Transferor Companies shall, together with all the property, rights and powers of the Transferor Companies, be transferred without further act or deed to the Transferee Company and accordingly,

pursuant to Section 232 of the Act, shall stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.

- II. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Companies stand transferred to and vested in the Transferee Company, without any further act or deed and shall be in full force and effect in favour of the Transferee Company, as if the same were originally given to, issued to or executed in favour of the Transferee Company. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.
- III. All the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company, and accordingly, the same shall be pursuant to Sections 230 & 232 of the Companies Act, 2013 transferred to and become the liabilities and duties of the Transferee Company.

- IV. All contracts, agreements, undertakings, insurance policies, bonds and all other instruments of whatsoever nature or description of the Transferor Companies which are subsisting or having effect immediately before the Effective Date as per the Scheme shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto / thereunder.
- V. All taxes paid or payable by the Transferor Companies and all existing and future incentives, un-availed credits and exemptions, the benefit of carried forward losses and other statutory benefits to which the Transferor Companies are entitled shall be available to and vest in the Transferee Company.
- VI. All proceedings pending by or against the Transferor Companies shall be continued by or against the Transferee Company.
- VII. The Transferee Company shall, without further application, allot to the existing members of the Transferor Companies the quantum of shares of the Transferee Company to which they are entitled under the said Scheme of Amalgamation and subject to appropriate uniform mechanism in respect of fractional entitlements.

- VIII. The fee, if any, paid by the Transferor Companies on its / their authorised capital shall be set off against any fees payable by the Transferee Company on its authorised capital subsequent to the sanction of the Scheme.
- IX. The Transferor Companies shall be dissolved without winding up, and the Board of Directors and any committees thereof of the Transferor Companies shall, without any further act, instrument or deed, stand dissolved.
- X. The Petitioner Company, within 30 days after the receipt of the certified copy of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies for registration. On such certified copy being provided, the Transferor Company shall be dissolved without undergoing the process of winding up. The Scheme will become effective upon filing the certified copy of this Order with the concerned Registrar of the Company. The concerned Registrar of Companies shall transfer all documents relating to the Transferor Company registered with him to the file relating to the said Transferee Company, and the files relating to the Transferor and Transferee Companies shall be consolidated accordingly, as the case may be.

- XI. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- XII. The Copy of Scheme of Amalgamation filed on Page 38-75 of the First motion Application shall form an integral part of this Order.
18. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners on the filing of the Schedule of Property, i.e. (i) freehold property of the Transferor and Transferee Companies; and (ii) leasehold property of the Transferor and Transferee Companies by way of affidavits of the Transferor and Transferee Companies respectively. Copy of this Order is to be communicated to the Counsel for the Petitioners.

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**